

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

Amend Section 27.80
Title 14, California Code of Regulations
Re: Ocean Salmon Sport Fishing

- I. Date of Initial Statement of Reasons: January 4, 2010
- II. Date of Final Statement of Reasons: April 21, 2010
- III. Dates and Locations of Scheduled Hearings:
 - (a) Notice Hearing: Date: February 4, 2010
Location: Sacramento, CA
 - (b) Discussion Hearing: Date: March 3, 2010
Location: Upland, CA
 - (c) Discussion Hearing: Date: April 8, 2010
Location: Monterey, CA
 - (d) Adoption Hearing: Date: April 21, 2010
Location: Teleconference

IV. Update:

In March 2010, National Marine Fisheries Service (NMFS) issued guidance to the Pacific Fishery Management Council (PFMC) regarding new constraints that will be needed for 2010 ocean salmon fisheries to increase protection for endangered winter-run Chinook. The guidance requires either a reduction in the length of the fishing season for two consecutive months or an increase in the minimum size limit from 20 inches to 24 inches.

The PFMC adopted a modified Option 2 from the Initial Statement of Reasons (ISOR) to amend Section 27.80, Title 14, California Code of Regulations on April 15, 2010. The PFMC final recommendation for the 2010 federal regulations incorporated the NMFS guidance provided in March.

The proposed regulatory text reflects amendments needed to allow state salmon fishing regulations to explicitly conform to the new regulations

adopted for federal waters 3-200 miles from shore. The proposed changes from the original notice, and the final actions taken by the PFMC were circulated in a continuation notice dated April 20, 2010.

The proposed changes from the ISOR regulatory language in response to the PFMC 2010 salmon regulatory recommendations are:

Modified Option 2

The proposed inclusion of a 2011 season opening date provided in the original notice has been removed. Regulations specifying the 2011 season date will be established in a subsequent regulatory action when more information on 2011 fishing opportunities becomes available.

- (1) For all waters of the ocean north of Horse Mountain and in Humboldt Bay: The season will run May 29, 2010 through September 6, 2010. The minimum size is twenty-four inches total length.
- (2) For the area between Horse Mountain and Point Arena: The season will run April 3, 2010 through September 6, 2010. The minimum size will be twenty inches total length through April 30, 2010 and will increase to twenty-four inches total length thereafter.
- (3) For the area between Point Arena and Pigeon Point: The season will run April 3, 2010 to April 30, 2010 seven days per week. Beginning May 1, 2010, fishing will be allowed on Thursday through Monday only, through September 6, 2010. The minimum size will be twenty inches total length through April 30, 2010 and will increase to twenty-four inches total length thereafter.
- (4) For the area between Pigeon Point and Point Sur: The season will run April 3, 2010 to April 30, 2010 seven days per week. Beginning May 1, 2010, fishing will be allowed on Thursday through Monday only, through September 6, 2010. The minimum size will be twenty inches total length through April 30, 2010 and will increase to twenty-four inches total length thereafter.
- (5) For the area south of Point Sur: The season will run April 3, 2010 to April 30, 2010 seven days per week. Beginning May 1, 2010, fishing will be allowed on Thursday through Monday only, through September 6, 2010. The minimum size will be twenty inches total length through April 30, 2010 and will increase to twenty-four inches total length thereafter.

The Fish and Game Commission adopted the modified Option 2 at its April 21, 2010 teleconference.

V. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting Those Considerations:

(1) Calvin Schiefferly, e-mail dated March 14, 2010:

- a. He requests use of a salmon punch card and an annual limit of 5 salmon per person.

Response:

- a. Salmon punch cards did not prove to be an effective harvest management tool for the ocean salmon fishery and were dropped by the PFMC and the Commission a few years ago. Annual limits are difficult to enforce and projected 2010 catches should stay within harvest targets without an annual limit and report card program.

(2) Jim Gaumer, e-mail dated March 29, 2010:

- a. He requested termination of the 2010 season, if harvest levels are lower than expected. The commercial and recreation salmon harvest is actively monitored to examine any large variances from the projected season.

Response:

- a. Comment noted.

(3) Dave Sereni e-mail dated April 20, 2010

- a. He doesn't agree with the minimum size increase to 24 inches.
- b. He doesn't agree with the 2 hook rule for rockfish.
- c. He doesn't agree with the 10 fish bag limit for rockfish.

Response:

- a. The increased minimum size limit was requested by NMFS to increase protection for endangered winter-run Chinook. Fishery constituents involved with the PFMC decision making process found a 24-inch size limit more preferable than a two-month season closure.
- b. This comment does not address Ocean Salmon fishery regulations and therefore cannot be addressed in this particular regulatory procedure.
- c. See Response 3B.

(4) George Osborn letter dated April 19, 2010

- a. He urges the Commission to immediately implement protocols that will allow the Director of the Department to conform to PFMC's potential

decision in March of 2011 to open the ocean salmon season in April 2011.

- b. He requests that the Commission conform to the Federal Regulations as approved by the PFMC regarding salmon fishing seasons for 2010.

Response:

- a. This comment is outside the scope of the proposed regulations.
- b. This is the Department's recommendation. Support noted.

VI. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:

California Fish and Game Commission
1416 Ninth Street
Sacramento, California 95814

VII. Location of Department files:

Department of Fish and Game
1416 Ninth Street
Sacramento, California 95814

VIII. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

The PFMC will examine various alternatives in the process of adopting the management options on March 11, 2010 for public review. These may include such alternatives as:

1. the minimum size of salmon that may be retained;
2. the number of rods anglers may use (e.g., one, two, or unlimited);
3. the type of bait and/or terminal gear that may be used (e.g., amount of weight, hook type, and type of bait or no bait);
4. the number of salmon that may be retained per angler-day or period of days;

5. the definition of catch limits to allow for combined boat limits versus individual angler limits;
6. the allowable fishing dates and areas; and
7. the overall number of salmon that may be harvested, by species and area.

(b) No Change Alternative:

Upon approval of the PFMC's recommendations by the NMFS, the State must move in a timely manner to conform its ocean sport fishing regulations for salmon in State waters (zero to three miles offshore) to the Federal regulations in order for the new State and Federal regulations to become effective at the same time. Otherwise, preemption of State regulatory authority by the NMFS could occur if State regulations are in conflict with Federal regulations.

(c) Consideration of Alternatives:

In view of the information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed, or would be as effective and less burdensome to affected private persons than the proposed regulation.

IX. Mitigation Measures Required by Regulatory Action:

The proposed regulatory action will have no negative impact on the environment. Therefore, no mitigation is necessary.

X. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed changes are necessary for the continued preservation of the

resource and therefore the prevention of adverse economic impacts.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

None.

- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

None.

- (e) Nondiscretionary Costs/Savings to Local Agencies:

None.

- (f) Programs Mandated on Local Agencies or School Districts:

None.

- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code:

None.

- (h) Effect on Housing Costs:

None.

Updated Informative Digest (Policy Statement Overview)

The Pacific Fishery Management Council (PFMC) annually reviews the status of west coast salmon populations. As part of that process, it recommends ocean salmon fisheries regulations aimed at meeting biological and fishery allocation goals specified in law or established in the Salmon Fishery Management Plan (FMP). These recommendations coordinate west coast management of sport and commercial ocean salmon fisheries in the Federal fishery management zone (3 to 200 miles offshore) off Washington, Oregon and California. These recommendations are subsequently implemented as ocean fishing regulations by the National Marine Fisheries Service (NMFS).

California's sport fishing regulations will need to conform to the new Federal regulations to achieve optimum yield in California under the FMP. The Fish and Game Commission (Commission) adopts regulations for the ocean salmon sport fishery in State waters (zero to three miles offshore) which are consistent with Federal fishery management goals and are effective at the same time.

PFMC Regulatory Outlook

On March 11, 2010, the PFMC will develop the ocean salmon fisheries regulatory options for public review and the final PFMC regulation recommendations will be made on April 14, 2010. The various ocean salmon sport fishery alternatives that the PFMC will examine in the process of adopting options may include:

1. the minimum size of salmon that may be retained;
2. the number of rods anglers may use (e.g., one, two, or unlimited);
3. the type of bait and/or terminal gear that may be used (e.g., amount of weight, hook type, and type of bait or no bait);
4. the number of salmon that may be retained per angler-day or period of days;
5. the definition of catch limits to allow for combined boat limits versus individual angler limits;
6. the allowable fishing dates and areas; and
7. the overall number of salmon that may be harvested, by species and area.

Commission Regulatory Outlook

Although there are no PFMC regulatory options to review at this time, the PFMC March options will serve as the basis for the Commission's 2010 regulatory action affecting the State's ocean salmon sport fishery. There exists a possibility of continued ocean water closures off California due to low Sacramento River fall Chinook salmon returns to the Central Valley river system in 2009.

Further Commission actions affecting the ocean salmon sport fishery may be developed after the annual PFMC reports, *Review of 2009 Ocean Salmon Fisheries* and *Preseason Report I Stock Abundance Analysis for 2010 Ocean Salmon Fisheries*, are available in late February 2010.

Present Regulations

Current regulations have a short salmon fishing season north of Horse Mountain including Humboldt Bay from August 29 through September 7, 2009. All areas south of Horse Mountain were closed in 2009, but include a note that in 2010, the season in these areas will open on April 3.

Proposed Regulations

For public notice purposes to facilitate Commission discussion, the Department of Fish and Game (Department) is proposing two regulatory options:

- 1) No fishing in all areas, and
- 2) Limited salmon fishing, if salmon allocations are made available

The proposed changes from current regulations are shown below:

Option 1 - No fishing in all areas

The date ranges in the following areas are proposed to encapsulate all possibilities of the Commission final action on the PFMC 2010 recommendations in mid-April. This approach will allow final State ocean salmon regulations to be effective at the same time as salmon regulations in federal ocean waters.

- (1) For the area north of Horse Mountain, the following language is proposed to replace the existing regulations:
 - a. All waters of the ocean north of Horse Mountain and in Humboldt Bay are closed to salmon fishing.

Because the PFMC adopted a sport fishing season and other modifications to existing recreational salmon fishing regulations at its April 15th decision hearing, option 1 is no longer viable and thus, there are no proposed modifications to the noticed regulatory text of option 1.

Option 2 - Limited salmon fishing, if salmon allocations are made available

The date ranges in the following areas are proposed to encapsulate all possibilities of the Commission final action on the PFMC 2010 recommendations in mid-April. This approach will allow final State ocean salmon regulations to be effective at the same time as salmon regulations in federal ocean waters.

- (1) For all waters of the ocean north of Horse Mountain and in Humboldt Bay: The season, if any, may occur within the range of May 15 - September 30. The exact opening and closing dates, and the length of the season will be determined in April by the PFMC. In 2011, the season will open on a date within the range of May 21 - September 30.
- (2) For the area between Horse Mountain and Point Arena: The season, if any, may occur within the range of April 3 - November 14. The exact opening and closing dates, and the length of the season will be determined in April by the PFMC. In 2011, the season will open on a date within the range of February 12 - April 30.
- (3) For the area between Point Arena and Pigeon Point: The season, if any, may occur within the range of April 3 - November 14. The exact opening and closing dates, and the length of the season will be determined in April by the PFMC. In 2011, the season will open on a date within the range of April 2 - April 30.
- (4) For the areas between Pigeon Point and Point Sur: The season, if any, may occur within the range of April 3 - October 3. The exact opening and closing dates, and the length of the season will be determined in April by the PFMC. In 2011, the season will open on a date within the range of April 2 - April 30.
- (5) For the areas south of Point Sur: The season, if any, may occur within the range of April 3 - October 3. The exact opening and closing dates, and the length of the season will be determined in April by the PFMC. In 2011, the season will open on a date within the range of April 2 - April 30.

In March 2010, NMFS issued guidance to the PFMC regarding new constraints that will be needed for 2010 ocean salmon fisheries to increase protection for endangered winter-run Chinook. The guidance requires either a reduction in the length of the fishing season for two consecutive months or an increase in the minimum size limit from 20 inches to 24 inches.

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